

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

THE UNITED STATES for the use of )  
GMW Fire Protection, Inc., an Alaska )  
Corporation, )

Plaintiff, )

vs. )

KANAG'IQ CONSTRUCTION CO., )  
INC., an Alaska Corporation, and )  
WESTERN SURETY COMPANY, a )  
South Dakota Corporation, )

Defendants. )

Case No. A05-170 CI (TMB)

**MEMORANDUM IN SUPPORT OF**  
**MOTION TO ALTER OR AMEND A JUDGMENT RE ATTORNEY'S FEES**

A motion to alter or amend a judgment may be granted when the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice. Howard v. Gutierrez, 503 F.Supp.2d 392, 394 (D.D.C. 2007). Defendants move to alter or amend the judgment dated January 29, 2008, based on the need to correct a clear error.

In its Memorandum Decision and Order [Re: Plaintiff's Motion for Attorney's Fees at Docket 125], the Court concluded that GMW cannot recover attorney's fees against the surety. Specifically, the Court held: "Kanag'Iq's co-defendant, Western Surety Co., did not assert counterclaims against GMW; therefore, GMW cannot recover attorney's fees against the surety." [Decision, p. 3] For the same reason, GMW cannot recover costs

1 against the surety. See United States ex rel. Leno v. Summit Constr. Co., 892 F.2d 788,  
 2 791 (9th Cir. 1989) (when a subcontractor's claims arise under the Miller Act, each party  
 3 bears its own legal costs absent an enforceable contract provision or evidence that an  
 4 opponent has acted in bad faith, vexatious, wantonly, or for oppressive reasons). The  
 5 judgment dated January 29, 2008, and redistributed thereafter, improperly awards  
 6 attorney's fees and costs against the surety as follows:

7  
 8 IT IS ORDERED AND ADJUDGED:

9 that Plaintiff GMW Fire Protection Inc., "Ex Rel.," recover of defendants  
 10 Kanag'IQ [sic] Construction Co., Inc., *et al.*, the sum of \$533,848.77,  
 11 together with prejudgment interest in the amount of \$127,292.05\*\*,  
 12 attorney's fees in the amount of \$40,261.25\*\* and plaintiff's cost of action in  
 13 the amount of \$6,059.75\* for a total judgment of \$707,461.82\*\* . . . .

14 [Exhibit A (emphasis added)] The judgment thus improperly awards attorney's fees  
 15 and costs against Western Surety, in light of the Court's Memorandum Decision and Order  
 16 [Re: Plaintiff's Motion for Attorney's Fees at Docket 125]. Defendants respectfully  
 17 request that the Court correct the judgment to reflect the Court's order that GMW cannot  
 18 recover attorney's fees and costs against Western Surety.

19 DATED at Anchorage, Alaska this 7th day of July, 2008.

20 EIDE & GINGRAS, P.C.  
 21 Attorneys for Defendants  
 22 Kanag'Iq Construction Co., Inc. and  
 23 Western Surety Company

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**CERTIFICATE OF SERVICE**

I am a legal secretary employed by the law firm of Eide & Gingras, P.C. That on this 7th day of July, 2008, I served

☒ Electronically

a true and accurate copy of the foregoing document upon the following counsel of record:

Sarah J. Tugman, Esq.  
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EIDE & GINGRAS, P.C.

By /s/Donna Charter

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